S.B. Civil Writ Petition No.1243/2007
Narayan Singh & Ors.
vs
Sohan Singh & Ors.
AND
S.B. Civil Writ Petition No.1244/2007
Narayan Singh & Ors.
vs
Madho Singh & Anr.

Date of order : 29.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.Shambhoo Singh,for the petitioners.
Mr.Suresh Shrimali]
Mr.Rajesh Choudhary], for the respondent.

<><><>

Heard learned counsel for the parties.

The plaintiff filed the suit for prohibitory injunction on 5th July, 2000. On 29th May, 2002, the plaintiff-respondent submitted an application of the amendment of the plaint. Thereafter, the plaintiff submitted another application under Order 1 Rule 10 (2) read with Order 6 Rule 17 CPC on 19.8.2002. The matter was fixed for arguments on application for impleading party and consequently amendment in the plaint. ON 23rd Oct., 2002, the plaintiff submitted an application under Order 8 Rule 9 CPC. On 21.1.2003, the trial court heard the arguments on application filed under Order 1 Rule 10 read with Order 6 Rule 17 CPC, which was filed on 19.8.2002. That application was allowed by the trial court vide order dated 21.1.1003. In view of impleading new

party by order dated 2.1.2003, the case was fixed for summoning of the newly added defendants. It appears that no order was passed on application filed under Order 6 Rule 17 CPC dated 29th May, 2002 and the issues were framed by the trial court on 23.1.2004 and plaintiff's evidence was closed on 5.8.2005. The case was fixed for the evidence of the defendant and defendant submitted his affidavit. At this stage, the plaintiff pointed out that plaintiff's application filed on 29th May, 2002 has not been decided by which plaintiff stated that during the pendency of the suit, the defendant has altered the suit property and, therefore, in changed facts and circumstances, the decree for mandatory injunction may be granted. The trial court allowed the amendment of the plaint by order dated 9.1.2007. Hence, these revision petitions by the defendants to challenge the order dated 9.1.2007.

Learned counsel for the petitioner submits that in a suit for prohibitory injunction, the respondent sought relief of mandatory injunction and thereby the the respondent-plaintiff want to change the nature of the suit. It is also submitted that the plaintiff-respondent did not pursue his amendment application for five years and, therefore, the trial court could not have allowed the application. It is submitted that Hon'ble Supreme Court in the case delivered in

Bharat Coking Coal Ltd. Vs. Raj Kishore singh & Anr reported in (2000) 9 SCC 174 held that the application for changing the nature of the dispute drastically cannot be allowed. This Court also after considering several earlier judgments in the case of Ratan Singh & Anr. Vs. Ram Prasad & Ors reported in 2002(3) WLC (Raj.) 225 held that amendment not going to root of case nor necessary for decision of controversy then amendment cannot allowed.

I considered the submissions of learned counsel for the parties and perused the record, which was summoned. It is not in dispute that the amendment application was filed even before the new parties were added in the suit. It appears that because of the proceedings taken due to allowing the amendment for impleading the parties inadvertently that application remained unnoticed for a long period and the court could not decide the application. The application for amendment of the plaint was submitted by the plaintiff even when all the defendants were not served. In that situation, there was no reason for dismissing the application and, therefore, the trial court rightly allowed the application. So far as change of nature of the suit is concerned, that itself has no application to the fact of the present case as the plaintiff filed the suit for injunction and stated that factual position on spot was changed

after filing of the suit and before the Commissioner was appointed by the court. The plaintiff sought relief of mandatory injunction also, which is in consonance with the original relief and sought on the ground of subsequent event. It is different thing if on merits the plaintiff will not have any case then the court may not decree the suit of the plaintiff, but so far as taking plea at this early stage of the suit as stated above, cannot be ground for dismissal.

In view of the above reasons, the judgments cited by learned counsel for the appellant has no application to the facts of the present case. By amendment,the nature of the suit is not changed, but plaintiff sought only relief in accordance with the changes circumstances in a suit for injunction making the suit of injunction from prohibitory injunction to mandatory injunction. Therefore, I do not find any merit in the writ petitions and the same are hereby dismissed. The stay orders granted are also vacated. The records of the trial court be sent forthwith.

(PRAKASH TATIA), J.

c.p.goyal/-